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COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

W. Tayloe Murphy, Jr.
Secretary of Natural Resources

Street Address: 355 Deadmore Street, Abingdon, Virginia 24210
Mailing Address: P.O. Box 1688, Abingdon, Virginia 24212-1688
Fax: (276) 676-4899
www.deq.state.va.us

Robert G. Burnley
Director

Michael D. Overstreet
Regional Director
(276) 676-4800

STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION ORDER BY CONSENT ISSUED TO Lyall Stone, Inc. Registration No. 11042

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1301 and 10.1 – 1184, between the State Air Pollution Control Board and the Lyall Stone, Inc. for the purpose of resolving certain violations of State Air Pollution Control Board Regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Air Pollution Control Board, a collegial body of the Commonwealth of Virginia described in § 10.1-1301 and § 10.1-1184 of the Code.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Regional Office" means the Southwest Regional Office of the Department.
6. "Order" means this document, also known as a Consent Order.
7. "Regulations" means the "State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution", which have been incorporated into Title 9 of the Virginia Administrative Code (VAC).
8. "Company" means Lyall Stone, Inc., 4648 Potato Creek Road, Mouth Of Wilson, VA 24363.

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SECTION C: Findings of Facts and Conclusions of Law

1. Lyall Stone, Inc. owns and operates a stone quarry facility at 4648 Potato Creek Road, Mouth Of Wilson, VA 24363.
2. Lyall Stone, Inc. was issued a Virginia Stationary Source Permit to Operate a stone quarry facility on September 15, 2000.
3. Permit condition No. 12 of your Virginia Stationary Source Permit to Operate states the following "Visible Emissions Evaluation (VEE) is required on the conveyor transfer from conveyor Ref. No. BC-5 to conveyor BC-6 may be reduced to ten (10) sets of twenty-four (24) consecutive observations (at fifteen (15) second intervals) to yield a six (6) minute average if: a) There are no individual readings greater than ten (10) percent opacity for the transfer, and b) There are no more than three (3) readings of ten (10) percent opacity for the one (1) hour period for the transfer.
4. 9 VAC 5-170-160.A – (Conditions on Approvals) of the Commonwealth of Virginia State Air Pollution Control Board Regulations for the Control and Abatement of Air Pollution states in part: The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.
5. On July 28, 2004, DEQ sent a Notice of Violation Letter (NOV No. 07-02-04) for a permit violation, by Certified Mail-Return Receipt Requested, to Lyall Stone, Inc., informing the Company that DEQ had reason to believe that a violation of Air Pollution Law and Regulations 9 VAC 5-170-160.A had occurred.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §10.1 – 1316 (C), orders Lyall Stone, Inc. and Lyall Stone, Inc. agrees to pay a civil charge of \$706.00 within 30 days of the effective date of this Order. Payment shall be made by check payable to the "Treasurer of Virginia", delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, Virginia 23240

For purposes of properly identifying its payment, Lyall Stone, Inc. shall include with the check, a notification of its Registration Number, Federal Identification Number and the fact that payment is being made in accordance with the terms of this Order.

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SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Lyall Stone, Inc. for good cause shown by the Company, or on its own motion after notice and opportunity to be heard.
2. Nothing herein shall be construed as altering, modifying, or amending any term or condition contained in the Company's Virginia Stationary Source Permit to Operate dated September 15, 2000.
3. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of Lyall Stone, Inc. as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.
4. For purposes of this Order and subsequent actions with respect to this order, Lyall Stone, Inc. admits the jurisdictional allegations, factual findings, or conclusions of law contained herein.
5. Lyall Stone, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
6. Lyall Stone, Inc. declares it has received fair and due process under the Administrative Process Act, Code §§ 9-6.14:1 et seq., and the State Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to enforce this Order.
7. Failure by Lyall Stone, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
8. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
9. Lyall Stone, Inc. shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Lyall Stone, Inc. must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Lyall Stone, Inc. shall notify the Director, Southwest Regional Office of DEQ within 24 hours with a follow-up in writing within seven days when circumstances are anticipated to occur, are occurring, or have occurred that may

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delay compliance or cause noncompliance with any requirement of this Order.
Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Director, Southwest Regional Office of DEQ within 24 hours of learning of any condition listed above, which the Company intend to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

10. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
11. This Order shall become effective upon execution by both the Director or his designee and Lyall Stone, Inc.. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date, which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or the Board determines Lyall Stone, Inc. has met all the conditions of the order and the Company is thereafter notified of compliance by the Department. Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Lyall Stone, Inc. from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

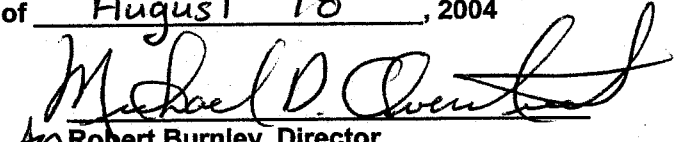
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13. By its signature below, Lyall Stone, Inc. voluntarily agrees to the issuance of this Order.

And it is ORDERED this day of August 18, 2004


for Robert Burnley, Director
Department of Environmental Quality

Lyall Stone, Inc. voluntarily agrees to the issuance of this Order.

 V.P.
Mr. Jerry Short, Vice President
Lyall Stone, Inc.

Date: 8/16/04

Commonwealth of Virginia

City/County of Smyth

The foregoing document was signed and acknowledged before me this 16th day of August, 2004 by Jerry Short on behalf of Lyall Stone, Inc.

Date: August 16, 2004


Notary Public

1. My commission expires: June 30, 2008